UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/179/Add.2
31 October 1990

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION
Thirty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fourth periodic reports of States parties due in 1989

Addendum

PORTUGAL */

[7 August 1990]

CONTENTS

		Paragraphs
1.	PART I	1 - 19
2.	PART II	20 - 257
3.	Article 2	33 - 54

*/ This report contains the third and fourth periodic reports, which were scheduled to be submitted on 23 September 1987 and 23 September 1989 respectively.

For the initial and second periodic reports submitted by the Government of Portugal, and the summary records of meetings at which those reports were considered, see:

Initial report - CERD/C/101/Add.8 (CERD/C/SR.727, 728 and 730);
Second periodic report - CERD/C/126/Add.3 (CERD/C/SR.820 and 822).

GE.90-18197/2677B

best copy available

CONTENTS (continued)

		Paragraphs
4.	Article 3	55 - 66
5.	Article 4	67 - 82
6.	Article 5	83 - 169
	A. The right to equal treatment before the courts and administrative bodies	
	B. The right to security of the person and protection by the State against violence or bodily harm	
	C. Political rights	
	D. Other civil rights	
	E. Economic, social and cultural rights	
7.	Article 6	170 - 182
8.	Article 7	183 - 257
	A. Education	
	B. Promotion of human rights	
	C. Culture and the information media	

PART I

1. This report deals with the application in internal law of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination, which was adopted by the United Nations General Assembly in resolution 2106 A (XX) of 21 December 1965 and came into force on 4 January 1969.

2. The Convention was approved, for the purposes of accession thereto, by Act 7/82 of the Assembly of the Portuguese Republic, dated 29 April 1982, and came into force for Portugal on 23 September 1982.

3. In view of the time which has elapsed since the second report was submitted to the Committee and of the fact that a number of sessions of the Committee have not been held, the present report combines the third and fourth reports of Portugal, submitted pursuant to article 9, paragraph 1, of the Convention, and covers the period from 1986 to 1989.

4. The initial report was submitted in August 1985 (CERD/C/101/Add.8) and the second report in August 1988 (CERD/C/126/Add.8).

5. The scope of the present report is naturally limited as it includes both the third and fourth reports and there was an opportunity for a dialogue with the Committee when the previous reports were submitted. Accordingly, the report includes up-to-date information on the implementation of the Convention in internal law, taking into account developments that have since taken place. Attention is drawn, in particular, to the second Constitutional Amendment Act, recently adopted in August 1989.

6. The third and fourth reports naturally take account of the Committee's guidelines (CERD/C/70/Rev.1) which are an essential working document for the planning and structure of the report.

7. In paragraph (c) of Part I of the Committee's Revised General Guidelines, States parties to the Convention are requested to provide information in connection with General Recommendation IV, adopted by the Committee on 16 August 1973, on the demographic composition of their population.

8. As has already been indicated in the reports submitted previously, official statistics do not indicate the racial composition of the Portuguese population, because Portugal has followed the United Nations recommendations concerning the population census (1980), which suggested that the inclusion of questions relating to race should be optional.

9. Furthermore, the Portuguese Constitution establishes the principle of non-discrimination, pursuant to which no one may enjoy a privilege or benefit, be deprived of a right or exempted from an obligation on account of his race.

10. However, in view of the interest shown by the Committee in this issue, some figures are given below indicating the demographic composition of the Portuguese population, on the basis of the country of origin of foreigners residing in Portugal.

READEX
FICHE

Foreign residents in Portugal at the end of 1988

Country	Number	Percentage
Africa	40 253	42.6
Angola	4 434	4.7
Cape Verde	26 953	28.6
Guinea-Bissau	3 021	3.2
Mozambique	2 762	2.9
Sao Tome and Principe	1 730	1.8
Others	1 353	1.4
North America	8 338	8.8
United States	6 055	6.4
Canada	2 095	2.2
Others	188	0.2
South America	14 645	15.5
Brazil	9 333	9.9
Venezuela	4 828	5.1
Others	484	0.5
Europe	27 280	28.9
Germany, Federal Republic of	4 133	4.4
Spain	7 105	7.6
France	2 803	3.0
Netherlands	1 546	1.6
United Kingdom	7 115	7.5
Others	4 578	4.8
Asia	3 413	3.6
Oceania	325	0.4
With dual nationality	199	0.2

11. At the end of 1988, the Aliens Department had issued 4,675 residence permits and 118 passports to foreigners.

12. As regards applications for asylum, from 1981 to the end of 1988, 5,658 applications were examined. During the same period, 366 applications were accepted (9.54 per cent) and 3,228 applicants were turned down.

13. The applications accepted concerned 712 persons of the following nationalities:

Afghanistan	1
Angola	165
Bulgaria	1
Cape Verde	1
Cameroon	2

Czechoslovakia	3
Chile	33
Cuba	18
Ethiopia	2
Ghana	4
Guinea-Bissau	33
Guinea	1
Hungary	3
Iran	21
Malawi	2
Mozambique	373
Sao Tome and Principe	27
Romania	2
Zaire	19

14. In 1988, 240 procedures were initiated and asylum was granted to seven persons:

Angola	1
Chile	1
Iran	1
Mozambique	1
Romania	2
Sao Tome and Principe	1

15. A third set of data concerns applications to retain or acquire Portuguese nationality under Decree-law 308-A/75 of 24 June. At the time of the April 1974 revolution, when the former overseas territories gained independence, thousands of persons, most of them Portuguese nationals who had been residing and working in the territories, returned to Portugal. Approximately 1 million persons arrived in Portugal in 1974-75.

16. Applications to retain or acquire Portuguese nationality were submitted by persons who, because of the nationality law, were not Portuguese but, in accordance with the principles of jus soli or jus sanguinis, wished to preserve their links with Portugal.

17. Accordingly, it was decided to allow persons, in certain circumstances, to retain or acquire Portuguese nationality, on the basis of a number of essential criteria such as the following:

(a) Preservation of family unity;

(b) Avoidance of situations in which persons involuntarily become stateless;

(c) The holding of public office or membership in the Portuguese armed forces;

(d) The existence of special ties with the Portuguese community, on account of residence or economic or professional activities in Portugal.

18. In July 1989, the situation was as follows:

43,537 applications had been filed;

31,398 applications had been dealt with;

6,774 applications (21.6 per cent) had been turned down;

12,498 applications to retain Portuguese nationality (39.8 per cent) had been granted;

12,126 applications for naturalization (38.6 per cent) had been granted;

6,062 cases were still pending.

19. The applicants were nationals of the former Portuguese colonies, mainly the territories of Mozambique and Cape Verde.

PART II

Information in relation to articles 2 to 7

20. Portugal, a democratic State based on the rule of law, the sovereignty of the people and the safeguarding and protection of fundamental rights and freedoms, follows in its international relations, inter alia, the principles of respect for human rights and co-operation with other peoples in the interests of the emancipation and progress of mankind (Constitution, arts. 2 and 7).

21. Accordingly, one of the essential tasks of the State is to guarantee fundamental rights and freedoms and respect for the principles of a democratic State governed by the rule of law and the validity of laws and other acts of the State, of the autonomous regions and of local authorities provided they are in conformity with the Constitution (Constitution, arts. 9 and 3).

22. In the sphere of human rights, Portugal recognizes the fundamental rights set out in the Constitution, without excluding other rights that derive from the applicable rules of international law (Constitution, art. 16).

23. To emphasize its concern for the observance of fundamental rights, the Constitution stipulates that its relevant provisions shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and shall be binding on all public and private bodies (art. 18).

24. Concern for the protection of fundamental rights and freedoms is shown by their recognition and specifically by assertion of the principle of equality and non-discrimination and by the establishment of means of resisting any infringement or denial of those rights and freedoms.

25. Accordingly, any victim of discrimination on grounds of race, may request the courts to assert his rights, and may not be denied justice for lack of means (Constitution, art. 20).

26. This system is further strengthened by the automatic incorporation of duly ratified or approved conventions into the Portuguese legal system, by virtue of the fact that they are internationally binding upon Portugal.

27. All persons subject to Portuguese jurisdiction may thus assert their interests or rights which may have been breached, before the international bodies established by the said conventions, such as the European Commission of Human Rights, the European Court of Human Rights and the United Nations Human Rights Committee.

28. While Portugal recognizes the importance of a system of legal protection, it also takes responsibility for providing resolute, growing and active support for measures to develop awareness and provide information. Unfortunately, the existence of a right or the provision of punishment for violations is no guarantee that such violations will cease to occur.

29. Portugal's recognition of this fact has led it increasingly to develop training activities for judges, members of the police force and prison personnel, by focusing increasing attention on human rights in the various curricula.

30. In addition, the mass media play a vital role in this sphere by disseminating the most important measures adopted in order to implement rights, freedoms and safeguards and by developing activities aimed to educate and develop awareness, on the basis of such values as tolerance, pluralism, and the coexistence of various schools of thought and opinion.

31. Accordingly, this document focuses special attention on these factors, which, in our view, renew hope in a world marked by understanding, co-operation, progress and defence of human rights.

32. This fact was reasserted by the second amendment of the Constitution, in 1989, whose article 7, paragraph 5, as amended states:

> "Portugal is committed to strengthening its European identity and the activities of European States on behalf of peace, economic progress and justice within relations between peoples."

Article 2

33. The previous reports, together with their presentation, have revealed Portugal's determination to condemn, as well as to adopt measures to prohibit, all forms of racial discrimination, and at the same time to protect rights, freedoms and safeguards in general.

34. This can be seen from several provisions of the Portuguese Constitution, and Portugal's domestic legislation seeks to reaffirm it by pursuing these aims. Reference is made below to some texts which reflect this concern.

35. Act 44/86, of 30 September, provides that a declaration of a state of siege or of emergency may in no circumstances affect the right to life, personal integrity and identity, civil capacity and citizenship, the principle of non-retroactivity of criminal law, the right of accused persons to a defence, and freedom of conscience and religion.

36. Suspension of the exercise of rights, freedoms and safeguards, wherever it is permitted, must always observe the principle of equality and non-discrimination.

37. The constitutional provision governing the state of siege or of emergency (art. 19) was amended, as part of the second constitutional reform, in order more clearly to establish the scope of those régimes (paras. 2 and 3) and to stress the principles of proportionality and necessity with respect to the measures adopted under the régimes.

38. Citizens whose rights, freedoms or safeguards are violated by a declaration of a state of siege or of emergency, or by an unconstitutional or unlawful measure adopted thereunder, are entitled to compensation in conformity with the general provisions of the law; their right of access to the courts for the defence of rights, freedoms or safeguards which have been or may be infringed cannot in any circumstances be restricted.

39. The new Code of Criminal Procedure, adopted by Decree-Law 78/87, of 17 February, aims to ensure that justice is duly carried out and that the fundamental rights of individuals are protected, while at the same time guaranteeing the safety of the community.

40. The provisions adopted observe the principle of equality of arms in proceedings, and strengthen the rights of the accused in respect of defence (art. 61).

41. For that purpose, the Code provides, for example, that interpretation services must be available free of charge to anyone taking part in proceedings who is unfamiliar with Portuguese (art. 92).

42. In December 1987, the Government adopted legislation on access to the law and to the courts, providing, under article 20 of the Constitution, for promotion of the right to legal information and protection.

43. This will help to ensure that no one is prevented, owing to social or cultural factors or inadequacy of financial resources, from being informed of, exercising or defending his rights.

44. In this spirit, all courts anad judicial offices will gradually be provided with public information and guidance services.

45. Legal protection will consist of judicial assistance and legal advice granted to anyone unable to afford a lawyer's fees or court costs.

46. Aliens and stateless persons lawfully residing in Portugal enjoy this right to legal protection, as do non-resident aliens who are nationals of countries where a similar provision of the law applies to Portuguese nationals.

47. Act 87/88, of 30 July, governs radio broadcasting activities in Portuguese territory. Since this text will be examined in greater detail under article 7 of the Convention on the Elimination of All Forms of Racial Discrimination, only a few basic aspects of it will be dealt with here.

48. Pursuant to article 8 of that Act, freedom of though in respect of radio broadcasting includes the fundamental right of citizens to information reflecting ideological pluralism and the free expression of opposite trends of opinion and thought, which is a basic tenet of democracy. However, the Act prohibits the broadcasting of any programme or message that incites to acts of violence or acts contrary to criminal law.

49. Under a ministerial order issued on 10 December 1988, the Portuguese Government established a Commission for the Promotion of Human Rights and the Elimination of Inequality in Education with the express mandate of studying the multidisciplinary aspect of the subject and proposing measures to further its study and increase awareness of it among students and teachers.

50. The Constitutional Court recently handed down a decision on the General Service Regulations of the National Republican Guard (a special corps of troops intended for security, the maintenance of law and order and the protection and defence of the population), adopted by Order 722/85, of 25 September, and mentioned in Portugal's most recent report (CERD/C/126/Add.3, para. 44).

51. The Office of the Public Prosecutor, which protects the Constitution in accordance with democratic principles, ordered an assessment of the constitutionality of several provisions of the Regulations in the light of their apparent discrimination against gipsies with respect to the principle of inviolability of domicile and of correspondence.

52. In its decision, the Constitutional Court found that this principle had been violated in respect of searches carried out in the domicile of gipsies: under article 81 of the Regulations, searches could be carried out at night and without a warrant issued by the judicial authority concerned, contrary to constitutional provisions and the law on criminal procedure.

53. The Regulations recognize (art. 82 of the Civil Code) that the concept of domicile with respect to nomads should include wagons, caravans and tents, which in fact constitute their domicile.

54. Paragraph 2 of article 81 of the Regulations was declared unconstitutional as being contrary to article 34 of the Constitution.

Article 3

55. Portugal firmly condemns apartheid and considers its abolition essential for peace and development in southern Africa.

56. Portugal recognizes as legitimate the aspiration of the majority of South Africans to a régime ensuring full citizenship and equal enjoyment of civil and social rights. Discrimination with respect to access to employment, justice and education that is based on colour is contrary to Portugal's principles. Portugal understands the need to put an end to the intolerable injustices brought about by the apartheid régime and has always unreservedly supported this goal both in the United Nations General Assembly and in other bodies and specialized agencies, such as the Commission on Human Rights and the International Labour Organisation.

57. This goal can be achieved, however, only through a gradual and peaceful transformation of South African society that will lead to the establishment of full democracy that is not based on race. Portugal therefore supports all efforts to build a society devoid of discrimination based on colour, religious beliefs or political opinion. It considers that all South Africans are entitled to take part in the transition towards such a society and that negotiations including all the parties concerned must rapidly be initiated if it is to be successful.

58. The primary aim of these negotiations, in our opinion, should be to define the means necessary to bring about the full rule of law, based on the principle of "one man, one vote" and respect for human rights.

59. The release of Nelson Mandela and other anti-apartheid leaders, the end of the state of emergency (except in Natal Province), the meetings held between the Government and the organizations representing the black majority, and the repeal of the Separate Amenities Act are all signs of a new climate of developing dialogue in South Africa, heralding the emergence in the near future of a democratic and non-racialist régime.

60. With praiseworthy courage, the main agents of this process have, in a manner we deem irreversible, paved the way for profound and necessary change in the Republic of South Africa.

61. Owing to the presence in the Republic of South Africa of 600,000 Portuguese, and to the special ties that exist between Portugal and both Angola and Mozambique, the Portuguese Government is particularly interested in the evolution of the situation inside the country and the prospects for peace and development it may open up in southern Africa.

62. The international community should give careful consideration to the economic, social and political problems which the new South African régime will have to face. Portugal is participating, together with the other members of the European Community, in a Special Programme of Assistance to the Victims of Apartheid, and shares the view that the support of the international community will be a decisive factor in building a new, democratic and prosperous South Africa. The two major Portuguese commercial undertakings in South Africa (Bank of Lisbon and South Africa and TAP/Air Portugal) are governed by the Code of Conduct for Companies with Subsidiary Branches or Representation in South Africa, adopted in 1977 by the European Community and binding for Portugal since its accession to the EEC. This Code enshrines the principles of non-discrimination and equal opportunity for all workers.

63. Portugal has continued to curtail its bilateral economic ties with South Africa despite the fact that it has considerable investments in southern Africa, particularly in the Cabora Bassa dam project, which, in normal operating conditions, would supply hydroelectric energy to both South Africa and Mozambique.

64. Portuguese exports to South Africa amounted to a total value of 25.8 million European currency units (ECU) in 1988 and ECU 32 million in 1989; they accounted for only 0.29 per cent of total Portuguese exports in 1989. Imports from South Africa amounted to ECU 91.4 million in 1988 and ECU 125 million in 1989; they accounted for only 0.77 per cent of total Portuguese imports in 1989.

65. Portugal has steadfastly advocated dialogue and persuasion as the means of bringing about a democratic régime in South Africa. It has endorsed the many representations, decisions and efforts undertaken in that respect since January 1986 by the European Community, has co-operated in the numerous initiatives taken under United Nations auspices and has established bilateral contacts with various representative sectors of South African society.

66. In this spirit, Portugal welcomes the recent progress made towards the abolition of apartheid and, while fully aware of the remaining obstacles to the achievement of full democracy in South Africa, appeals to the international community to urge all South African citizens to work together to build a new, democratic and prosperous régime.

Article 4

67. As already stated, the Portuguese Constitution upholds the principle of equality and non-discrimination, and prohibits associations that embrace a Fascist ideology, i.e. that adopt, promote or disseminate values such as colonialism or racism.

68. The Criminal Code provides penalties for the propagation of ideas inciting to racial discrimination and for encouragement of racist activities through the promotion of those ideas through participation in organizations

that uphold them or through support, financial or otherwise, for racist activities (art. 189). Criminal legislation also provides penalties for the formation of groups, organizations or associations engaging in activity whose object is the commission of a crime (arts. 287 and 288).

69. The crime of murder is deemed aggravated if it is motivated by racial or religious hatred.

70. Act 64/78 on Fascist organizations prohibits the formation of organizations that advocate violence or uphold fascism, i.e., "the adoption, support or dissemination of values, principles, institutions or methods ... specifically warmongering, violence as a form of political struggle, colonialism, racism ... ".

71. This principle is echoed in the constitutional provision (art. 163, para. 1 (d)) on the status of Deputies, and in the complementary legislation on the subject (Act 3/85, of 13 March), which stipulates that Deputies who are convicted by a court of participating in organizations with a Fascist ideology shall forfeit their mandate.

72. The existing juridical and judicial system covers any situation of discrimination which may arise and emphasizes the role of information through awareness-raising and the publicizing of fundamental rights.

73. In this spirit, and in conformity with the journalists' code of ethics (specifically the stipulation, contained in the first chapter, that journalists must observe the fundamental principles of human rights and refrain from encouraging racial hatred), the Press Council issued, in July 1988, a recommendation in connection with a series of newspaper articles which, in the Council's opinion, contained disparaging statements based on race, colour or ethnic origin, thus inciting to racial hatred.

74. Following that recommendation, the Press Council alerted public opinion and requested the Office of the Prosecutor General of the Republic to carry out an investigation of those acts, which were punishable under the Criminal Code; this request was granted by the Prosecutor General.

75. A movement has recently spread to Portugal of persons known as "skinheads", who believe in racial superiority and advocate violent and militaristic behaviour.

76. These persons, who invoke nationalist values, turn their hostility and violence against non-Europeans, particularly black Africans, show firm opposition to democratic institutions and pluralism, and support ideas associated with the extreme right.

77. The movement is formed of young people (some 400), most of them students, often from families where conflict is rife, who seek to accomplish their military service in special units subject to rigorous discipline.

78. At present, groups of "skinheads" are found only in large cities such as Lisbon and Porto. They have been responsible for serious incidents, including the murder in Lisbon of a member of a political party, the Partido Socialista Revolucionário (PSR).

79. These incidents have been reported by the mass media, and the movement's activities are closely watched by the judicial authorities and the police.

80. The Office of the Prosecutor General of the Republic has ordered an inquiry aimed at identifying these groups of "skinheads", determining their characteristics and discovering their possible connections with other groups or organizations suspected of similar activities, with a view to their punishment.

81. Additional information is to be gathered with a view to initiating, if necessary, civil or criminal proceedings aimed at dismantling these organizations.

82. We are confident that timely recourse to appropriate legal mechanisms inherent to the rule of law will enable us to deal with this movement.

Article 5

83. The two previous reports described the existing legal framework and the various legislative and administrative measures planned to bring about a system prohibiting all forms of racial discrimination in respect of the right to equal treatment before the courts and any administrative body, the right to security of the person and protection by the State against violence or bodily harm, and to protection of political, economic, social and cultural rights.

84. At the same time, following Portugal's ratification of the two international covenants on human rights, the submission of reports to the monitoring bodies established under those instruments has naturally continued - see in particular the second report on the application of civil and political rights (CCPR/C/42/Add.1) submitted in November 1989. This report covers in greater detail the measures adopted in pursuance of the provisions of the Covenant and giving effect to article 5, paragraphs (a) and (d), of the Convention on the Elimination of All Forms of Racial Discrimination.

85. Updated information on the principal measures adopted is provided below.

A. The right to equal treatment before the courts and administrative bodies

86. (See in this regard document CCPR/C/42/Add.1, paras. 171-216 and 805-817; and the previous report, CERD/C/126/Add.3, paras. 78-103.)

87. As has already been mentioned, the principle of equality laid down in article 13 of the Constitution is the essential foundation of the whole of the existing legal order. This article was not modified in the second revision of the Constitution.

88. Article 20 sets forth the principle of access to the courts, covering both the right to information and the right to protection under the law.

89. This provision was modified during the revision of the Constitution. Article 20 now reads:

> "1. Everyone shall be guaranteed access to the law and to the courts to defend his or her rights and legitimate interests, and justice may not be denied to a person for lack of financial resources.
>
> "2. Everyone has the right, in accordance with the law, to legal information and consultation and to legal assistance."

90. Two essential changes have been introduced:

(a) Firstly, the Constitution emphasizes the scope of the concept of access to justice, meaning not only access to the courts for the defence of rights and legitimate interests, but also access to the law, enabling everyone to acquaint himself with the rights which he enjoys and the means available to him to ensure their effective realization;

(b) Secondly, in recognition of the universal nature of the right to legal information and legal consultation and protection, the expression "all citizens" in the article has been replaced by "everyone".

91. The recent legislation adopted in this area of access to justice (Decree-Law 387-B/87 of 29 December and Decree-Law 391/88 of 26 October) has been mentioned in the comments on article 2.

92. The system which has been established aims to ensure that "no one shall encounter difficulties or be prevented, by virtue of his social or cultural circumstances or through lack of economic resources, from becoming aware of his rights, asserting them or protecting them" (art. 1, para. 1, of Decree-Law 387-B/87).

93. The law provides that these objectives will be attained through systematic action and mechanisms of "legal information" and "legal protection". Legal protection takes two forms: legal assistance and legal advice (art. 6 of Decree-Law 387-B/87).

94. Persons who demonstrate that they do not have sufficient economic resources to meet the fees due for the services of defence counsel and to pay the normal court costs in full or in part are entitled to legal protection (art. 7, para. 1 of the same Decree-Law).

95. Aliens and stateless persons ordinarily residing in Portugal are also entitled to legal protection. Non-resident aliens are granted this right to the extent in their home countries it is granted to Portuguese nationals (art. 7, paras. 2 and 3).

96. Legal assistance includes full or partial exemption from payment of legal costs and expenses, or their deferment, as well as payment for the services of a defence counsel or solicitador (art. 15, para. 1), such expenses to be paid by the State (art. 47, para. 1). This system applies to all courts regardless of the procedure followed (art. 16, para. 1).

97. Legal assistance may be requested at any stage during the proceedings. It continues during appeal procedures, regardless of the decision on the substance of the case, and extends to all procedures associated with those for which assistance has been granted (art. 17, para. 2),

98. In the same context, a protocol was concluded between the Ministry of Justice and the Bar Association in November 1986 establishing a Legal Information Office with branches in Lisbon and Porto.

99. This Office is responsible for providing free legal guidance and advice to all those who do not have sufficient economic resources to engage a lawyer.

100. Legal advice is provided by lawyers or trainee lawyers, who must observe the code of conduct drawn up by the Bar.

101. Article 23 of the Constitution provides that citizens may apply to the Provedor de Justiça (Ombudsman) in connection with actions or omissions by the authorities. The new revision of the Constitution, re-affirming this concern with the right to equal treatment, emphasized the independence of the office with an explicit reference in article 23, paragraph 3: "The office of the Provedor de Justiça shall be an independent organ, and he or she shall be appointed by the Assembly of the Republic".

102. Furthermore, a new paragraph has been added stipulating that the organs and staff of the administrative authorities must co-operate with the Provedor de Justiça in the performance of his or her functions (art. 23, para. 4).

103. Another clear reflection of this concern for equal treatment may be found in the new paragraph 8 of article 32, which provides that in proceedings relating to administrative offences the defendant must be guaranteed the right to be heard and the right to a defence.

104. Article 52 of the Constitution, concerning the right of petition and popular action, has also been modified. Paragraph 3 now provides that:

> "Everyone, personally or through associations for the protection of the interests in question, shall be granted the right of popular action in the cases and on the conditions stipulated by law, in particular the right to promote the prevention, cessation or judicial prosecution of offences against public health, degradation of the environment and the quality of life and degradation of the cultural heritage, as well as the right to seek appropriate compensation for the victim or victims of such offences".

105. Mention should also be made here of the fact that various bills have been presented to the Assembly of the Republic relating to the manner in which this right shall be exercised. They include Bills Nos. 491/V (submitted by the Socialist Party), 517/V (independent deputies), 518/V (Social Democrat Party), 526/V (Communist Party) and 527/V (Democratic Renewal Party).

106. Regarding the responsibility of staff of the administrative authorities, the Constitutional Amendment Act led to a rewording of article 266, by means of which paragraph 2 was strengthened:

"The organs and staff of the administrative authorities shall be subject to the Constitution and the law, and must, in performing their functions, respect the principles of equality, proportionality, justice and impartiality".

107. In the area of safeguards for citizens in respect of administrative decisions, article 268 of the Constitution has also been modified substantially:

(a) A new paragraph 2 has been inserted which provides that "Citizens shall also have the right of access to administrative archives and registries, without prejudice to the provisions of the law relating to national and external security, criminal investigation and personal privacy";

(b) The subsequent paragraphs now read as follows:

"3. (formerly 2) Administrative decisions shall be notified to the interested parties in the manner provided by law, and must be properly substantiated when they affect the legally protected rights or interests of citizens.

"4. (formerly 3) All interested parties shall have the right to lodge an appeal against any administrative decision, regardless of its form, which harms their legally protected rights or interests.

"5. Citizens shall also have the right of access to the administrative courts to secure their legally protected rights or interests.

"6. For the purposes of paragraphs 1 and 2, the law shall set a time-limit for the response of the administrative authorities".

108. In the previous report mention was made of the Code of Criminal Procedure, which was then in draft form, and its provisions regarding equality of treatment. As the Code entered into force on 1 January 1988 under Decree-Law 78/87 of 17 February, it is appropriate to recall its principal features.

109. The statement of grounds presented to the Assembly of the Republic indicated that the general guidelines followed included:

(a) Simplified, less bureaucratic and speedier procedure compatible with the administration of justice and the safeguarding of fundamental human rights and social peace;

(b) Equality in law for the prosecution and for the defence in respect of all procedural acts, and material equality as regards the availability of "weapons" in the proceedings.

110. Under the Code, the defendant or, in other words, the person against whom a criminal charge has been brought (art. 57) must have the assurance that procedural rights and duties will be exercised (art. 60) through the recognition of his right to be present at proceedings directly concerning him, to choose a defence counsel or request a court-appointed counsel, to be

assisted by that counsel in all proceedings in which he participates, and to be informed of his rights by the judicial authority or police body before which he is to appear (art. 61).

111. Under article 92, "If any person who does not know or has an inadequate knowledge of the Portuguese language is involved in the proceedings, a competent interpreter shall be appointed, without charge, even if the presiding judicial officer or one of the participants in the proceedings knows the language used".

B. The right to security of person and protection by the State against violence or bodily harm

112. In this area it is important to bear in mind the report submitted earlier (CERD/C/126/Add.3, paras. 104-113) and also the second report submitted to the Human Rights Committee (CCPR/C/42/Add.1, paras. 299-334).

113. Portugal, recognizing the State's responsibility for the prevention of torture and the punishment of those responsible for it, ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9 February 1989 and has recognized the competence of the Committee to receive and examine communications from another State party or an individual alleging violations of a provision of the Convention (see resolution 11/88 of the Assembly of the Republic, dated 21 May).

114. Portugal has also very recently ratified the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (see resolution 3/90 of the Assembly of the Republic, dated 30 January).

115. In the same context, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by the United Nations General Assembly, has been translated into Portuguese and given wide distribution.

116. With regard to the right to security of the person, attention is drawn to the changes introduced by the Constitutional Amendment Act:

(a) Article 27, paragraph 4, now recognizes that "Any person deprived of his freedom shall be informed immediately and in a comprehensible manner of the reasons for his arrest or detention and of his rights";

(b) Following the amendment of the Constitution, article 28, paragraph 2, provides that: "remand in custody shall not be continued if it can be replaced by bail or by a more favourable measure provided for by law";

(c) Lastly, article 30 contains a new paragraph 5 under which "convicted persons who have been sentenced to a custodial penalty or measure shall retain their fundamental rights, subject to the restrictions provided for in the sentence and the requirements arising from its enforcement".

C. Political rights

117. See in this regard the previous report (CERD/C/126/Add.3, paras. 114-121) and document CCPR/C/42/Add.1 (paras. 781-804).

118. The Constitutional Amendment Act introduced a number of important changes in this area. With regard to the status of aliens, article 15, paragraph 4 recognizes that: "the law may grant aliens residing in the national territory, on the basis of reciprocity, the capacity to vote in elections to local legislative bodies".

119. Article 40 deals with the right to broadcasting time, the right of reply and the right of political reply, specifying that:

> "1. The political parties and trade union and professional organizations and those representing economic activities shall have the right to broadcasting time on the public radio and television service, in keeping with their representativeness and in accordance with objective criteria to be defined by law.
>
> "2. The political parties represented in the Assembly of the Republic which do not participate in the Government shall have the right, in accordance with the law, to broadcasting time on the public radio and television service, allocated in accordance with their representativeness, as well as the right of reply and the right of political reply to political statements made by the Government on a basis of equality in terms of duration and size with the space and statements allocated to the Government.
>
> "3. At election time, the candidates shall have the right to regular and fairly apportioned broadcasting time on national and regional radio and television broadcasting stations, in accordance with the law."

120. In article 50, concerning access to public service, there is recognition (in para. 2) that:

> "No one may suffer prejudice in an assignment, in his employment, in his professional career or in the social benefits to which he is entitled by reason of the exercise of his political rights or the performance of political functions".

121. The Constitutional Amendment Act added a new paragraph 3, which provides that:

> "As far as access to elective offices is concerned, the law may only specify the cases of passive electoral incapacity which are necessary to guarantee the electors' freedom of choice, together with immunity and independence in the exercise of the functions of such offices."

122. Article 117 of the Constitution, relating to political parties and the right of opposition, has also been modified. Paragraph 3 now reads as follows:

> "Political parties holding seats in the Assembly of the Republic which are not represented in the Government shall have the right, inter alia, to be informed regularly and periodically by the Government of progress in the principal matters of public interest, and political parties represented in any other assembly to which direct elections are held shall enjoy the same right vis-à-vis, the corresponding executives on which they do not sit".

123. A new article 118, concerning referendums, has been included in the text of the Constitution and the former article 118 on grassroots popular organizations has been deleted. The basic elements of the new article are as follows:

"1. Citizens with the right to vote who are registered in the national territory may be called upon to express their views directly by means of an obligatory vote in a referendum following a decision of the President of the Republic, on a proposal by the Assembly of the Republic or the Government, in such cases and conditions as are provided in the Constitution and by law.

"2. The referendum may relate only to issues of major national importance on which the Assembly of the Republic or the Government must take a decision by approving an international convention or a legislative measure.

"3. The following, inter alia, shall be excluded from the scope of a referendum: amendments to the Constitution, the matters referred to in articles 164 and 167 of the Constitution (relating to the political and legislative powers of the Assembly of the Republic and matters which are of its sole competence) and issues and measures relating to budgetary, fiscal or financial matters.

"4. Each referendum shall deal with a single issue. The questions posed shall be formulated in yes/no terms, in an objective, clear and precise manner, and the maximum number of questions shall be specified in a law, which must also stipulate the other requirements for the formulation and conduct of the referendum.

"...."

124. Access to positions in the civil service:

(a) There have been no major changes in the legal framework governing access to public service.

(b) In this area, a new law on selection of public servants has been adopted, which reaffirms the principles previously laid down (see CERD/C/126/Add.3, paras. 119 and 120), namely:

(i) Freedom to apply;

(ii) Equal conditions and opportunity for all candidates;

(iii) Timely publication of information on selection methods, the final classification system to be used and, where appropriate, the experience and qualifications required;

(iv) Application of objective evaluation methods and criteria;

(v) Neutrality in the composition of the jury;

(vi) Right of appeal.

125. Offences for which holders of public office are answerable:

(a) In 1987 the Assembly of the Republic adopted an act relating to the responsibility of holders of public office for offences committed in the performance of their duties (Act 34/87, of 16 July);

(b) Offences committed by holders of public office are those expressly referred to in this Act, those referred to in the general criminal law which are expressly connected with the performance of those duties, and those committed in flagrant violation or abuse of functions or serious breach of the obligations inherent in the performance of functions;

(c) The holders of public office to which this Act relates include, in accordance with article 3, the President of the Republic, the President of the Assembly of the Republic, deputies in the Assembly of the Republic, members of the Government, deputies to the European Parliament, holders of local and regional public office and the Civil Governor;

(d) The Act defines certain particular offences for which holders of public office are answerable. Some of these are mentioned below;

(e) Acts prejudicial to the Constitution of the Republic committed with a view to its modification or suspension through violence or resort to methods other than the democratic ones provided for in the Constitution are punishable by imprisonment (art. 7);

(f) Acts prejudicial to the rule of law, where a person attempts to destroy, modify or subvert the constitutionally established rule of law including the rights, freedoms and guarantees established by the Constitution, the Universal Declaration of Human Rights and the European Convention on Human Rights, are punishable by imprisonment (art. 9);

(g) Denial of justice, where a person refuses to administer justice or apply the law for which he is responsible, is also punishable by imprisonment (art. 12);

(h) The unlawful suspension or restriction of rights, freedoms or guarantees involves cases of the suspension of rights, freedoms or guarantees which by their nature are not open to suspension, or cases where rights, freedoms or guarantees are suspended in the absence of the declaration of a State of siege or a state of emergency, or cases where the exercise of rights, freedoms or guarantees is prevented or hampered in serious breach of the rules for the implementation of the declared state of emergency. This too is punishable by imprisonment (art. 15);

(i) Refusal of co-operation involves situations in which, following a lawful request by the competent authority for co-operation falling within the scope of his duties, an office holder refuses to co-operate for the purpose of ensuring the administration of justice or any other public service. Such offences are punishable by imprisonment or a fine.

126. Effects - the final conviction of holders of public office may, depending on the case, give rise to loss of office or resignation, and, in the case of the President of the Republic, loss of the right to be re-elected (arts. 28-31).

127. In the above-mentioned cases, criminal proceedings (art. 41) may be initiated by:

(a) The citizen or body which has directly suffered prejudice;

(b) Any member of a deliberative assembly, where the office holder is answerable to it;

(c) Bodies responsible for the supervision of public agencies in respect of offences committed by office holders in the agency being supervised;

(d) The body which has the power to pardon the office holder in respect of the offences he has committed.

D. Other civil rights

1. The right to freedom of movement and free choice of residence within the country (see document CCPR/C/42/Add.1, paras. 445-466).

128. The accession of Portugal to the European Communities naturally called for the specification in its legislation of the requirements for entry into, sojourn in and departure from the territory for nationals of member States and members of their family, in conformity with the relevant directives of the Community's institutions.

129. Decree-Law 267/87 of 2 July therefore addressed this situation.

130. Under article 2, the following persons may enter and stay in the national territory:

(a) Wage-earning workers who are nationals of another member State;

(b) Nationals of a member State who have the right of establishment and the right freely to seek employment;

(c) The spouse and children under 21 years of age or dependants of such nationals;

(d) The dependent parents or grandparents of such nationals, or their spouses;

(e) Any other members of the family of such nationals who are their dependants or reside with them.

131. Entry to the national territory is allowed upon production of a valid identity card or passport (art. 2); provision is made for three types of residence permit:

(a) The residence permit of a national of a member State of the European Communities;

(b) A temporary residence permit;

(c) The residence permit proper.

132. Generally speaking, a temporary residence permit is issued to:

(a) Nationals of a member State admitted to the national territory for the purpose of taking up employment for a period exceeding three months but not exceeding one year;

(b) Nationals of a member State admitted to the national territory to perform or to benefit from a contract of employment exceeding three months in duration;

(c) Members of their families, under article 8, paragraph 1 (c) and (d).

133. The residence permit proper is issued to nationals of a member State and members of their families who have the right to stay permanently in the national territory (arts. 11 and 18).

134. Another piece of legislation (Decree-Law 267/89 of 18 August) deals with the system of special passports and establishes a new list of persons who are entitled to such a travel document. It includes delegates to the Assembly of the Republic, members of the Council of State, delegates to the Regional Assemblies, delegates to the Legislative Assembly of Macau, members of the Advisory Council of Macau and judges of the higher courts.

2. Right to freedom of thought, conscience and religion (see document CCPR/C/42/Add.1, paras. 658 to 663).

135. Under the Constitution of the Republic, as modified by the Amendment Act 1/82, the right to conscientious objection is guaranteed by law (art. 41, para. 6).

136. Conscientious objection is thus recognized in a broad sense and is no longer limited to the military field as in the earlier version of the Constitution. The new text therefore grants all persons the right to exemption from obligations and from the performance of acts which are contrary to their conscience.

137. On the question of conscientious objection to military service article 276 of the Constitution provides that:

"4. Conscientious objectors shall perform a civilian service which is of the same duration as arduous armed military service.

"5. The civilian service may be established as a substitute for or to supplement military service and may be made compulsory by law for citizens not subject to military service."

138. Act 6/85 of 4 May endorsed the legal system of conscientious objection, included provisions on civilian service (art. 4 et seq.) and took account of the conscientious objector's interests, capacity for self-denial and literary and occupational skills (art. 7).

139. According to this Act, the procedure for obtaining conscientious objector status is a judicial one, and the initial application must be submitted to the court in whose jurisdiction the applicant resides.

140. Decree-Law 91-87 of 27 February specifies the fields in which the service must be performed, its duration, the structure of the civilian service, the remuneration and social benefits of conscientious objectors, the objector's duties and the conditions of travel abroad. In addition, an Office for the Civilian Service of Conscientious Objectors has been set up within the Office of the President of the Council of Ministers.

141. Under article 2 of this Decree-Law, civilian service is to be performed in fields such as assistance in hospitals or health establishments, the protection of public health, anti-smoking, anti-alcohol and anti-drug campaigns, assistance to children, old people and disabled persons and assistance to populations affected by disasters.

142. These are services which are useful to society and which may even be performed abroad, if the conscientious objector is willing.

3. The right of everyone to own property alone as well as in association with others.

143. Following the second Amendment Act, Part II of the Constitution, dealing with economic organization, has undergone considerable changes.

144. In the chapter on fundamental principles (art. 80), a number of changes have been made in connection with the right to own property. The amended text provides that the economy and society shall be organized in accordance with the following principles:

> "(b) Coexistence of the public sector and the co-operative and social sector in the ownership of the means of production;
>
> (c) Collective appropriation of the means of production, of land and of the natural resources, in accordance with the public interest;
>
> (e) Protection of the co-operative and social sector of ownership of the means of production."

145. In addressing the priorities of the State in this area, in article 81, the Constitution recognizes the need (para. (e)): "to eliminate and prevent the formation of private monopolies and to check the abuses of economic power and all practices which may harm the general interest". In addition, the need is recognized (para. (h)) to "do away with large estates (latifundia) and develop smallholdings (minifundia)".

146. Article 82, which deals with the sectors of ownership of the means of production, provides that:

> "1. The coexistence of three sectors of ownership of the means of production is guaranteed.
>
> 2. The public sector is constituted by the means of production of which the ownership and management devolve upon the State or other public bodies.

3. The private sector is constituted by the means of production of which the ownership and management devolve upon individuals or bodies corporate under private law, subject to the provisions of the following paragraph.

4. The co-operative and social sector specifically comprises:

(a) means of production held and managed by co-operatives, in conformity with co-operative principles;

(b) collective means of production held and managed by local communities;

(c) means of production that are operated collectively by the workers."

147. On the question of collective appropriation article 83 provides that "the law shall determine the methods and forms of collective intervention and appropriation of the means of production and of land, as well as the criteria for calculating compensation".

E. Economic, social and cultural rights

148. The Constitutional Amendment Act introduced some changes in the section on economic, social and cultural rights. Article 9, on the basic tasks of the State, identifies as being of high priority:

"(d) Promotion of the well-being and quality of life of the people and genuine equality among Portuguese nationals, as well as the effective realization of economic, social and cultural rights, through transformation and modernization of the economic and social structures;

(e) Protection and fostering of the cultural heritage of the Portuguese people, protection of nature and the environment, conservation of natural resources and ensuring appropriate land use;

(f) Provision of education and continuing education and defence of the use and promotion of the international dissemination of the Portuguese language."

149. With regard to the right to health, the Constitution, as amended, provides that the realization of this right shall be ensured (art. 64):

"(a) by the operation of a universal and general national health service which provides care that is generally free of charge, depending, however, on individual economic and social circumstances;

(b) by the creation of economic, social and cultural conditions which ensure the protection of children, young people and the elderly, by the systematic improvement of conditions of working conditions, by the encouragement of physical culture and sports in schools and among the general population and by the development of national health education;

(c) by directing its activity towards the socialization of the cost of medical care and medicines."

150. In the section on youth, the Constitution has also undergone some amendments. Article 70 states that:

> "1. Young people, particularly those at work, shall receive special protection to ensure effective realization of their economic, social and cultural rights:
>
> (a) in education, vocational training and culture;
>
> (b) in access to initial employment, at work and in social security;
>
> (c) in physical education and sports;
>
> (d) in leisure time activities.
>
> 2. The prime objectives of youth policy shall be to develop the personality of young people and to create conditions for their effective integration into active life, a taste for free creation and a sense of service to the community.
>
> 3. The State, in conjunction with families, schools, enterprises, local residents' committees, cultural associations and foundations and recreational bodies, shall encourage and support youth organizations in the pursuit of these aims, and in all forms of international exchange among young people."

151. In the section on culture, the Amendment Act has modified article 73, which now provides that:

> "The State shall promote the democratization of culture by encouraging and ensuring access by all citizens to the enjoyment of culture and cultural creation, in collaboration with the mass media, cultural associations and foundations, recreational bodies, associations for the protection of the cultural heritage, local residents' associations and other cultural groups."

152. With regard to education, article 74 now provides, in paragraph 2, that:

> "Education should contribute to overcoming economic, social and cultural inequalities, to enabling citizens to participate democratically in a free society and to promoting mutual understanding, tolerance and a spirit of solidarity."

153. Paragraph 4, demonstrating concern about child labour, a phenomenon which particularly affects northern Portugal, states that:

> "The law shall prohibit work by minors of school age."

In this connection, it should be borne in mind that compulsory schooling comprises nine years of education or ends at the age of 15 (Outline Law of 1986 on the education system).

154. Article 76 on access to higher education reaffirms the principle of equality of opportunity and the democratization of education. It provides that:

> "The system of access to university and other higher education institutions shall ensure equality of opportunity and the democratization of education, having due regard to Portugal's need for skilled senior personnel and for the attainment of a higher level in the fields of education, culture and science."

155. Lastly, article 79, on physical education and sport, reflects the concern to help prevent violence in sport; this concern has led to the adoption of further internal legislation (Decree-Law 270/89 of 18 August) and to the ratification by Portugal of the Council of Europe Covention on this subject (adopted by Assembly of the Republic Resolution 11/87 of 10 March).

6. Student associations

156. By an act of 1987 (Act 33/87 of 11 July), the Assembly of the Republic introduced legislation on students' associations, granting them a set of rights and benefits designed to defend the interests of the students in their school life and in society.

157. These associations are free to draw up their own statutes and internal rules, elect their leaders and conduct their own affairs.

158. They are independent of the State, of political parties, of religious organizations and of all other organizations.

159. The associations have the right to air time on radio and television.

160. The associations have the right to take part in school life, including the determination of education policy. They even have the right to give opinions on the drafting of legislation in the educational sphere.

7. Legal status and social protection of home helpers

161. The Government has shown the importance it attaches to the development and improvement of systems for providing help to persons and families in an isolated, dependent or underprivileged situation, particularly the elderly and the disabled, by giving official status to "home helpers" under Decree-Law 141/89 of 28 April.

162. According to article 2, home helpers, are persons who provide in the homes services which are essential for normal family life, where such services cannot be provided by family members.

163. Home helpers must help with the preparation of meals, the laundering of clothes and the personal hygiene and comfort of the persons helped. They must accompany them when they go anywhere, and in their work ensure that the situations of isolation and solitude are transcended (art. 4).

164. Certain requirements must be met to become a "home helper", namely:

(a) Candidates must be 18 years of age or over and be in suitable physical and mental health;

(b) They must have completed their compulsory education;

(c) They must be mature, have a sense of responsibility and be interested in this work;

(d) They must be capable of developing family support functions so as to stimulate the activities of the assisted persons or families.

165. In the selection of home helpers, account is also taken of experience in the sphere of social work and appropriate training, as well as proximity to the home of the assisted persons. (art. 6).

8. System of social support services in juvenile and family courts and in specialized courts of mixed jurisdiction

166. Decree-Law 222/89 of 5 July revised the system of social support services and provided for creation of the position of vocational adviser, to be recruited from among psychologists, social service technical experts or school and social guidance workers.

167. The social support service is responsible for carrying out the measures which a magistrate or juvenile court magistrate (Curador) deems necessary for disposition of a case and for the execution of measures ordered, as well as for the preparation of reports, the reception of users and their transmission to the Minors Department.

9. National Council of Ethics for Life Sciences

168. Quite recently, the Assembly of the Republic set up (Act 40/90 of 9 June) a National Council of Ethics for Life Sciences, an independent body with special responsibility for:

(a) Systematically evaluating the moral problems arising from scientific progress in the spheres of biology, medicine or health in general, and giving opinions on them;

(b) Submitting annually to the Prime Minister a progress report on the application of new technologies to human life and their respective ethical and social implications, and making any necessary recommendations.

169. The Council is composed of 21 members of recognized competence in the sphere of the human and social sciences, medicine and biology, and representing the main ethical and religious currents of thinking.

Article 6

170. Article 6 of the Convention was commented on in the two previous reports submitted by Portugal (for the second report see document CERD/C/126/Add.3, paras. 144-161). The following is a brief review of measures that have since been taken in connection with the implementation of this article.

171. The 1989 amending Act introduced certain changes in the Constitution.

172. In our observations relating to article 5, paragraph (a), reference was made to several provisions, including article 20 on access to the law and recourse to the courts, article 23 on the Provedor de Justiça (Ombudsman) and article 52 on the right of petition.

173. On administrative liability, a question also dealt with in connection with article 5, paragraph (a), the present report makes reference to articles 266 and 268. Attention is drawn to paragraph 4 of the latter article which recognizes the right of everyone to seek legal remedy for any type of administrative action that prejudices his rights or his interests, that are protected by law.

174. Attention is also drawn to the content of article 22 of the Constitution which establishes the civil liability of the State and other public bodies for any actions or omissions in the exercise of their functions or caused by such exercise which result in violations of rights, freedoms or safeguards of citizens or in damage to another party.

175. It is also necessary to mention article 271, in view of the modification of that article by the Constitutional Amendment Act.

176. This article relates to the liability of State officials and employees. In its new wording, paragraph 1 provides as follows:

> "Officials and employees of the State and of other public bodies shall be liable to civil, criminal or disciplinary proceedings in respect of actions or omissions in the exercise of their functions or caused by such exercise which result in infringement of those rights or interests of the individual that are protected by law; the taking of action or proceedings against such an employee shall in no case be subject to approval by a higher authority."

(The underlining is ours and identifies the new parts of this paragraph).

177. In this connection it is important to note what was previously stated concerning criminal acts of public officials, specifically acts in violation of the Constitution of the Republic, acts prejudicial to the rule of law and denial of justice.

178. The Assembly of the Republic has approved a new organic law on courts of law (Act 38/87 of 23 December).

(a) This text, reaffirming the principles laid down in the Constitution, defines the courts as independent organs with competence to administer justice in the name of the people. It recognizes their purpose to be the defence of rights and interests protected by law, the repression of any violation of democratic legality and the settlement of conflicts of public or private interests.

(b) The courts are independent and subject only to the law and their decisions are binding on all public and private entities and prevail over those of any other authority.

(c) The Act defines the Office of the Government Procurator as the State organ responsible for representing the State, instituting criminal proceedings, defending democratic legality and promoting furtherance of the interests established by law.

(d) The Act provides for the use of computerized systems for the processing of information relating to administration of the courts and the conduct of proceedings under the constitutional and legal provisions in force.

179. The previous reports also made reference to recourse to international instances, the Human Rights Committee of the United Nations and the instances established by the European Convention on Human Rights.

180. With Portugal's ratification, on 9 February 1989, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its recognition of the competence of the Committee under article 22, a new safeguard has been established against violation of a fundamental right. Any person under Portugal's jurisdiction may thus submit to this Committee a communication claiming that he has suffered an act of torture.

181. By an order made in April, the Minister of Justice launched a programme entitled "The Citizen and Justice" which aims to establish closer links between citizens - who are entitled to justice - and the public system for the administration of justice.

182. This programme is designed to increase citizens' understanding of this system and to facilitate their access to and their participation in it. It will therefore include information campaigns, propose methods for increasing the efficiency of the services concerned and create opportunities for organized community action.

Article 7

183. As was mentioned in the previous reports, the Constitution of the Republic recognizes the right to education and the right to culture as fundamental rights of the individual and shows a continuing concern to contribute to the democratization of these rights.

184. Article 73, paragraph 2, deals with the democratization of education, to be achieved by schools and by other training methods. Paragraph 3 of the article is concerned with the objective of democratizing culture.

185. It should also be noted that article 2 of the Constitution, as modified by the 1989 amendment, establishes as an objective of the Portuguese Republic the achievement of economic, social and cultural democracy and the strengthening of participatory democracy.

A. Education

186. The Constitution recognizes that education must contribute to the elimination of economic, social and cultural inequality, enabling citizens to participate democratically in a free society and promoting mutual understanding, tolerance and a spirit of solidarity (art. 74, para. 2).

187. The outline law on the educational system (Act 46/86 of 14 October) provides, in the spirit of article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, that the educational system shall be the means for giving effect to the right to education. This right is guaranteed by continuing educational efforts designed to contribute to the development of the personality, to social progress and to the democratization of society, to contribute to the development of citizens who are free, responsible, independent and imbued with solidarity, and to enhance the human dimension of work.

188. The democratization of education is to be secured by achieving fair and effective equality of access to schooling and equal opportunity for school achievement (art. 2, para. 2) through the adoption of structures and procedures for participation in determining educational policy (art. 3, para. 1).

189. The educational system covers all Portuguese territory, but must be sufficiently flexible and diversified to extend to the generality of countries and localities in which Portuguese communities reside and where there is found to be a marked interest in the development and dissemination of Portuguese culture.

190. The purpose of education is to promote the development of a democratic and pluralist attitude that is respectful of others and of their ideas and is open to dialogue and to the free exchange of opinions, so as to develop citizens capable of evaluating their social environment in a critical and creative spirit and undertaking its gradual transformation (art. 2, para. 5).

191. This outline law defines the objectives of the educational system, of which the following may be mentioned (art. 3):

(a) To contribute to the defence of the national identity and to strengthen fidelity to Portugal's historical traditions, through development of awareness of the Portuguese cultural heritage within the context of the European universalist tradition and of the increasing interdependence of the world's peoples and the need for international solidarity;

(b) To ensure the right to be different, through respect for individuals and individual aims, as well as study and appreciation of the knowledge and culture of different peoples;

(c) To develop the capacity to work and to offer, on the basis of a sound general training, specific instruction that will ensure for everyone his fair place in an active existence, enabling him to contribute to the progress of society, in accordance with his interests, his capacities and his choice of occupation;

(d) To help to rectify any inequalities in regional and local development by encouraging, in all areas of the country, equality of access to the benefits of education, culture and science;

(e) To ensure equality of opportunity for both sexes, through co-education and school and vocational guidance and to develop the necessary awareness among all those taking part in the educational process;

(f) To ensure a second educational opportunity for those who were unable to benefit from education at the usual age and for those who turn to the educational system for reasons connected with their occupation or for cultural enrichment.

192. With regard to the participation of women in education, some figures are worth noting:

(a) In 1986/87, the female attendance rate in higher education was 53 per cent, in secondary education 55 per cent and in basic (compulsory) education 54 per cent;

(b) In 1985/86, 57.7 per cent of the students who had completed their masters course were females;

(c) Females constituted 27.4 per cent of the teachers in higher education, 46.6 per cent in secondary education and 80 per cent in primary education.

193. The adult literacy and basic education policy is defined in the National Plan (PNAEBA) to which reference was made in the previous report submitted by Portugal (see document CERD/C/126/Add.3, paras. 171 et seq.).

194. The outline law on the educational system provides for continuing education for the benefit of those who are not of primary or secondary school age, namely those over the age of 15 years for primary education and 18 years for secondary education.

195. Instruction by correspondence is provided for as an alternative to in-school education (art. 21).

196. Finally, out-of-school education is also provided for as a means of enhancing knowledge already acquired and making good deficiencies in training (art. 23).

197. In accordance with the outline law, the purposes of out-of-school education are:

(a) To eliminate illiteracy, including functional illiteracy;

(b) To contribute towards ensuring practica[illegible]uality of educational and occupational opportunity for those who did not atte[illegible] the regular educational establishments or left them early;

(c) To encourage solidarity and participation in the life of the community.

198. In order to combat the existing illiteracy, which is below 16 per cent, several training measures have been carried out for the benefit of the illiterate or semi-literate population. These include, in addition to instruction in written communication, basic training in matters closely connected with daily life. Between 1984 and 1987 approximately 5,200 courses were held in which over 63,000 persons participated. There has recently been an increase in the participation of young people in these courses, especially of those between the ages of 15 and 19 years. More than 45 per cent of the participants were over the age of 40.

199. The objective of special education is to ensure the rehabilitation and the social and educational integration of persons who have specific difficulties due to physical or mental handicap. It includes activities for students, families, educators and communities (art. 17).

200. With regard to Portuguese educational activity abroad, the outline law entrusts the State with the responsibility of promoting the teaching and study of the Portuguese language and Portuguese culture.

201. Several measures are provided for, such as inclusion of the study of the Portuguese language and Portuguese culture in the curricula of other countries and the establishment and support of Portuguese assistantships at foreign universities.

202. A particularly important measure has been the establishment of Portuguese schools in countries which have Portuguese as their official language and in Portuguese migrant worker communities. For the benefit of the latter, provision is made for courses and training activities integrated in or as a supplement to the educational systems of the host countries.

203. With regard to culture, reference may be made to:

(a) Fellowships for participation in seminars on the social and economic situation in Portugal and for carrying out research on emigration and on Portuguese communities;

(b) Support for action undertaken by groups, associations and media abroad, either in the form of grants or through provision of written or audio-visual materials or of sports, musical or theatrical equipment;

(c) The provision of video equipment to television associations and departments for the dissemination of films and reportages on Portugal;

(d) Support for Portuguese publications abroad and co-operation in the holding of Portuguese cultural events and exhibitions in host countries.

204. Portugal has already signed bilateral agreements on the teaching of Portuguese with the following countries: France, Federal Republic of Germany, Belgium, Luxembourg and Spain. All these agreements are based on three fundamental principl :

(a) The need to guarantee the right to education of Portuguese children under conditions of equality of opportunity with local children;

(b) This right implies preservation of the language and culture of the children's parents;

(c) The education provided must be such that the children's studies will be recognized if the children return to Portugal.

205. The importance attached to the teaching of Portuguese has been reaffirmed by a number of legislative measures. Some examples which may be mentioned are:

(a) The outline law on the teaching of Portuguese abroad, the aim of which is to secure the inclusion of the Portuguese language and Portuguese history, geography and culture in the curricula of host countries;

(b) Decree-law 519-E/79, which established regulations covering Portuguese teachers abroad;

(c) The granting of official status to Portuguese instruction courses abroad;

(d) The action to ensure overall co-ordination of the teaching of Portuguese in Germany and in France, where the largest Portuguese communities abroad reside;

(e) Various measures relating to the recruitment of Portuguese teachers for work abroad where, in addition to the need to ensure teaching of high quality, it is desirable to avoid keeping teachers who have long been expatriate immersed in a culture which is not their own so that they have difficulty in imparting up-to-date and correct knowledge of the present situation in Portugal.

206. It is also necessary to mention the Department of Basic and Secondary Education Abroad that has been set up in the Ministry of Education. This Department plans, recommends and implements policies in this field, recruits teachers and co-ordinates their work, concludes necessary bilateral agreements and provides financial and pedagogic support for classes organized by Portuguese communities abroad.

207. During the year 1984/1985, 2,704 classes were held for some 70,000 students in France, Spain, Sweden and The Netherlands. The largest number of participants was in France.

208. In conclusion, reference must be made to the importance the Portuguese Government attaches to realization of the rights of migrant workers. This has led it to ratify, in 1978, the Council of Europe's Convention on the Legal Status of Migrant Workers, on the implementation of which it submits regular reports. In the same spirit, it is participating in the work at the United Nations to prepare a convention on this subject.

209. The Government's interest in this subject led it to hold at Funchal, in 1983, in collaboration with the Council of Europe, a symposium on the human rights of foreigners in Europe. The conclusions of this symposium still constitute a reference document for the Council's work.

1. Education for gipsies

210. Under the Constitution, everyone has the right to education, with equal access to schooling and equal opportunity for school achievement. This naturally means that all groups in the population shall have the same opportunities, no difference in treatment being allowed. This is also a requirement under the Convention on Combating Discrimination in Education, which Portugal has ratified.

211. Education in Portugal also observes the principle of promotion of a democratic and pluralist spirit, respectful of others and of their opinions, within the framework of the European universalist tradition and the growing interdependence and solidarity among all the world's peoples.

212. With these principles in mind, the Portuguese authorities have sought to encourage access to education for the most economically and socially disadvantaged, special attention being paid to gipsy children.

213. Measures have been taken to overcome the greater difficulties experienced by such children because of the nomadic life of the gipsy population and their lack of a fixed place of abode. Special measures have been taken to provide schooling for gipsy children, particularly at the basic level, by providing classes for them and ensuring that the necessary teachers are trained. In practice, it is the younger gipsy children who have the highest school attendance rate.

214. According to a non-official source connected with gipsy institutions in Portugal, more than 60 per cent of the gipsy children under the age of 14 do not attend school. Only three gipsies have attended university.

215. According to the same source, the action and information plan undertaken by the Ministry of Education, particularly at the primary education level, constitutes a major step in ensuring the schooling of gipsy children.

216. It is recognized that it will be important to ensure the motivation of the gipsy families so that they follow their children's schooling in a responsible manner. The Ministry of Education is currently taking action to this end, with the support of social solidarity institutions such as the Misericordias.

217. In this area we are closely following the resolution of the Council of Ministers of Education of the European communities, which, in May 1990, suggested the adoption of several measures to ensure the schooling of gipsy children. We refer in particular to those concerning the reception of such children in schools, support for teachers and for gipsy families and the study of gipsy history and culture.

2. The National Commission for UNESCO

218. Decree-law 103/89 of 30 March 1990 provided for the reorganization of the National Commission for UNESCO. Under its statutes, the Commission has to pursue the aims set out in the constituent instrument of UNESCO and, in particular:

(a) To give opinions and make suggestions to the Government concerning the programmes and achievements of UNESCO;

(b) To support the Portuguese Mission to UNESCO and Portuguese delegations to meetings of the organization;

(c) To further the efforts of the departments and sectors of activity represented in the Commission, and to establish close co-operation with them;

(d) To provide information on the activities of UNESCO;

(e) To carry out the activities specified by the Government in the field of activity of UNESCO.

219. The National Commission for UNESCO has a varied membership which includes, for example, representatives of departments working in the field of activity of UNESCO, universities, scientific institutions and non-governmental organizations.

B. Promotion of human rights

220. Substantial progress has already been made in spreading knowledge of human rights. In order to develop awareness in this field and bring about effective enjoyment of human rights, we consider it essential to ensure systematic, up-to-date and accessible information.

221. In the Ministry of Justice, the Office of Documentation and Comparative Law has set up a documents centre specializing in human rights, which receives, processes and distributes the most significant works on this subject and the most important texts adopted in the international organizations.

222. One of its major activities is their distribution to the various Law Reform Committees.

223. The Ministry of Justice has since 1980 been publishing a Bulletin of Documentation and Comparative Law which is intended to inform and create awareness among jurists concerning community, international foreign and comparative law. The Bulletin always includes a chapter on human rights.

224. This publication reports on the jurisprudence of the Strasbourg instances, the Inter-American Court of Human Rights and the Human Rights Committee (e.g. the decisions in the A.M. v. Denmark and Duilio Fanali v. Italy cases), publishes articles on the activity of these bodies and Portuguese translations of the most recent texts approved or about to be adopted. The next issue will include, for example, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Convention on the Rights of the Child.

225. Also in this sphere, the fortieth anniversary of the Universal Declaration was marked by commemorative activities, in particular, the publication in Portuguese of a compilation of international human rights instruments, prepared in collaboration with the United Nations Centre in Portugal.

226. This compilation, which includes the most important conventions, has been sent to the Portuguese-speaking countries and has been given wide distribution by schools in Portugal.

227. Lastly, mention should be made of the radio programmes broadcast by the Office of the Ombudsman in order to make the general public fully aware of the fundamental rights of individuals.

3. Teaching of human rights

228. Selected human rights problems are studied at various levels of formal education, in history, philosophy, political science, sociology and the Portuguese language. Some schools have even organized exhibitions, debates and meetings, which have been largely attended.

229. In the universities, extension of curricula now permits study of the systems for the international protection of human rights.

230. Reference has already been made to the training of teachers. Some information is given below on the training of judges and police officials.

231. The Portuguese College of Magistrates has since its foundation provided training in fundamental rights and the international system for their protection. This helps to develop in magistrates an awareness of the value and importance of international law in this sphere, through study of the principal texts in force in Portugal. In view of its regional nature, the European Convention has an important place here.

232. The College and its students participate in a number of scientific and cultural activities connected with the promotion of international law and knowledge of the activities of the international organizations. For example, a seminar was held on the Convention on the Rights of the Child mentioned earlier.

233. It is important to note that the Bar has taken a part in these activities through the training it provides for young lawyers; the latter are required to complete a course of training before they can perform their professional duties to the full.

234. The training of teachers is naturally of particular importance and there is increasing attendance of the classes of the Institut René Cassin at Strasbourg, and those organized by L'école Instrument de Paix, a non-governmental organization in consultative status with the United Nations.

235. In late 1988, the Portuguese Government, recognizing the importance of human rights teaching, set up a Commission to promote human rights and combat inequalities in education, expressly responsible for studying the multi-disciplinary nature of this approach and recommending steps to be taken to strengthen its study and increase awareness on the part of teachers and pupils (Order 195/ME/88, of 12 December).

4. Training

236. Portugal is conscious of the importance of training in the prevention of human rights violations and has for some years been providing systematic training in a number of professions whose activity is basic to the realization of fundamental rights, freedoms and guarantees.

237. For example, the knowledge imparted to these professions regarding recourse to international bodies - such as the Strasbourg instances and the Human Rights Committee - is of vital importance to them.

5. Police officials

238. Following the changes introduced in 1985 in the regulations governing the police forces, to which reference has already been made, the recruitment and training of officers in the various branches of the police has undergone a major change, particularly in the area of public relations and fundamental rights, guarantees and freedoms.

239. As regards relations with the public, all police officers now carry a code of conduct which, while stressing the objectives of police action, namely, defence of democratic legality and the fundamental rights of citizens, also lays down standards of courtesy towards the public and establishes a code of personal behaviour.

240. The code states that police action must be carried out impartially and with respect for fundamental rights and freedoms, within the limits established by the law and without recourse to unlawful or manifestly excessive methods.

241. The training of police officers, which differs according to grade, always includes a large section on rights, freedoms and guarantees, either in the basic training or in continuing training.

242. The classes cover, in addition to the historical development of human rights, the universal nature of those rights, non-discrimination, legal information and protection, the activities of the Provedor de Justica (the Ombudsman) and those of the courts. Considerable attention is paid, moreover, to study of the regional and universal systems for the protection of human rights.

243. The Universal Declaration of Human Rights, the Covenants, the United Nations and the Council of Europe Conventions against torture, and the European conventions concerning the use of firearms and concerning violent demonstrations at sports events, now in force in our domestic law, are currently being studied.

244. It is worth pointing out that even in the case of private security personnel (permitted under Decree-Law 282/86, 5 September), selection and recruitment must take account of awareness of fundamental rights, freedoms and guarantees and of the the related obligations.

245. With reference to other professional categories, attention is drawn to the fact that the principal international texts are distributed in Portuguese to personnel of the prison services, particularly the Code of Conduct for Law Enforcement Officials, the Principles of Medical Ethics, the Standard Minimum Rules for the Treatment of Prisoners and the recently adopted European prison rules.

246. Lastly, the Physicians' Deontological Code, which establishes principles with regard to the use of torture, as the report mentions in connection with article 7 of the Covenant, also reflects the importance that is attached to training and professional activity. The Code even requires refusal to give up premises, instruments or medicines or to transmit scientific knowledge which would permit recourse to violence.

C. Culture and the information media

247. The Government programme submitted to the Assembly of the Republic and adopted by a majority reasserts in its chapter on culture the principle of access by all Portuguese citizens to culture and the State's duty to promote culture in its development strategy and enjoyment of conditions and structures which will afford creative artists the necessary means of expression within the framework of the Constitution.

248. Certain measures to this end are called for. These include the following:

(a) Integration of culture and the arts in school curricula and co-operation with television in producing programmes and broadcasting cultural events;

(b) Safeguarding and fostering the cultural heritage, as a right and duty of citizens. This involves organized co-operation between citizens and institutions and combined efforts on the part of central Government and local authorities;

(c) Encouragement of cultural exchanges in order to emphasize Portugal's presence in the world and enrich Portuguese cultural values in the constant encounter with other countries;

(d) Strengthening of cultural relations with the EEC countries, Brazil and the Portuguese-speaking countries of Africa.

249. In the sphere of social communication, the Constitutional Amendment Act introduced some important changes which are worth noting. Paragraph 2 of article 38 on freedom of the press and information media, has been amended:

(a) This paragraph now reads as follows:

> "2. Freedom of the press shall signify:
>
> (a) Freedom of expression and creation for journalists and literary contributors, and a place for the former in the editorial orientation of public information media, unless they belong to the State or are of a doctrinaire or confessional nature."

(b) and (c) correspond to paragraphs 3 and 4 of the earlier text.

250. The new paragraphs 3, 4, 5 and 6 now provide as follows:

> "3. The law shall generally ensure that the ownership and the means of financing of the public information media are disclosed.
>
> 4. The State shall ensure the freedom and independence of the information media vis-à-vis those possessing political or economic power, by imposing the principle of specificity of the enterprises owning general information media, treating them and supporting them in non-discriminatory fashion and preventing their concentration, particularly through multiple or interlocking shareholdings.

5. The State shall ensure the existence and operation of a public radio and television service.

6. The structure and operation of the public information media of the public sector shall safeguard their independence of the Government, the administration and other public authorities and guarantee scope for expressing and comparing various trends of thought."

251. The Constitutional Amendment Act established a High Authority for Public Information, an independent body which replaced the Public Information Council. This High Authority is responsible for ensuring the right to information, freedom of the press and the independence of the public information media vis-à-vis those possessing political or economic power, as well as scope for expressing and comparing various trends of thought, the exercise of the right to broadcast and the right of political reply and rejoinder (art. 39 of the Constitution).

252. In our earlier discussion of article 2 of the Convention, we mentioned the Broadcasting Act.

253. The purposes of broadcasting, as set out in article 4, are:

(a) To inform the public, by ensuring the right to inform others, to inform oneself and to be informed, without hindrance or discrimination;

(b) To foster the cultural development of the people by ensuring scope for expressing and comparing various trends of thought;

(c) To promote mutual knowledge, the exchange of ideas and the exercise of critical freedom among Portuguese citizens;

(d) To promote the creation of habits of civic coexistence proper to a democratic state.

254. Article 5 includes among the functions of a public broadcasting service the following:

(a) To ensure the independence, pluralism, accuracy and objectivity of information and programming;

(b) To contribute to information, leisure and the promotion of education and culture among the public in general, taking into account differences in age, occupation, interests, locality and origin;

(c) To encourage better mutual acquaintance between Portuguese nationals and aliens;

(d) To promote the production of educational and vocational programmes particularly for children, young people, the elderly, social and occupational groups and cultural minorities.

255. Article 8 prohibits the transmission of programmes or messages inciting to violence.

256. We believe it also to be worth mentioning a last point concerning the Journalists' Deontological Code, which also reflects this condemnation of hatred and violence and calls for ideological pluralism and the free expression and comparison of different trends of thought.

257. According to this Code, journalists must:

(a) Respect and campaign for the right of the people to be informed;

(b) Maintain professional secrecy and not divulge sources of information;

(c) Defend and promote the prompt correction of inaccurate or untrue information, and accept and defend the right of reply;

(d) Seek through information to develop civic awareness, as well as the culture and critical capacity of the Portuguese people and never to encourage bad instincts or morbid sentiments;

(e) Respect the fundamental principles of human rights and contribute to better knowledge and deeper understanding among peoples, based on the principles of the right of nations to self-determination and independence, non-interference in domestic affairs, equality and the mutual advantages of peaceful coexistence, by never encouraging fascist ideology or racial, ethnic, national or religious hatred.